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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,708	05/17/2001	David M. Shaw	12293-19	4131

50086 7590 04/13/2007	EXAMINER
LAW OFFICE OF DAVID H. JUDSON 15950 DALLAS PARKWAY SUITE 225 DALLAS, TX 75248	TAYLOR, NICHOLAS R

ART UNIT	PAPER NUMBER
2141	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

PTOL-90A (Rev. 10/06)

	Application No.	Applicant(s)
Office Action Summary	09/859,708	SHAW, DAVID M.
	Examiner	Art Unit	
	Nicholas R. Taylor	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *26 March 2007*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *15,16,18 and 20-31* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *15,16,18 and 20-28* is/are rejected.

7) ☒ Claim(s) *29-31* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on *28 March 2005* is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 15, 16, 18, and 20-31 have been examined. Claims 15, 16, 18, and 20-

28 are rejected. Claims 29-31 are objected to.

Specification

2.   All references to application 09/478,571 (e.g., on page 8) should be updated to

reflect the current status as U.S. Patent No. 6,665,726.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention. Specifically, the claim is dependent on itself. For the

purposes of this action, it is interpreted that the claim correctly depends on claim 30.

Claim Objections

5.   Claim 15 is objected to for being indefinite and failing to include essential steps.

The amended claim teaches an apparatus comprising "issuing a request to each of a

set of servers and receiving a response to the request." However, prior to these

requests it is not clearly stated how the set of servers is received or created. The

apparatus of claim 15 must receive the set of servers from an outside source, as the

system disclosed in the specification is neither preconfigured with a list of servers nor

designed for broadcasting requests.

Allowable Subject Matter

6.   Claims 29-31 are objected to as being dependent upon a rejected base claim,

but would be allowable if rewritten in independent form including all of the limitations of

the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   Claims 15, 16, 18, 20-25, and 27 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Goldszmidt et al. (U.S. Patent 6,195,680), Wynblatt et al. (U.S.

Patent 6,546,421), and Lumelsky et al. (U.S. Patent 6,377,996).

9.   As per claim 15, Goldszmidt teaches an apparatus, comprising:

        a processor; a media player; (Goldszmidt, column 5, lines 26-31, and column 8,

lines 19-23)

a program code module comprising code executable by the processor to carry

out the following method steps:

as a media stream is being received from a first server and rendered by the

media player (Goldszmidt, column 5, lines 54-59, and column 8, lines 19-23),,

determining whether the media stream is acceptable according to a given metric;

(Goldszmidt, column 7, lines 10-45)

if the media stream is not acceptable, and as the media stream continues to be

received, taking a given action to initiate delivery of the media stream from the given

server; receiving the media stream from the given server; and (Goldszmidt, column 7,

lines 10-45)

when the given offset is reached, rendering in the media player the media stream

received from the given server (Goldszmidt, column 8, lines 19-23).

Goldszmidt teaches issuing requests to servers and selecting a server based on

a response, yet accomplishes this via an intermediary (see Goldszmidt, fig. 4).

Therefore, Goldszmidt fails to entirely teach issuing a request to each of a set of servers

and receiving a response to the request, and using data associated with the response

from each of the set of servers to identify a given server in the set of servers.

Wynblatt teaches issuing a request to a set of servers, receiving a response, and

using data associated with the response to identify a given server in the set of servers in

which to acquire a media stream (Wynblatt, col. 5, line 50 to col. 6, line 15; see fig. 3;

see also re-selection of col. 7, lines 36-57)

It would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to have combined Goldszmidt and Wynblatt to provide the server

requests of Wynblatt in the system of Goldszmidt, because doing so would allow

continuous and automatic server selection in a client system (Wynblatt, col. 1, lines 55-

59; where the system structure is also simplified by decreasing the need for an

intermediary control server).

Goldszmidt-Wynblatt teaches switching the to the stream on the second server

using buffers and advanced portions, yet fails to specifically teach wherein the given

action includes the steps of:

(a) creating a buffer; (b) receiving from the first server and caching in the buffer

advanced portions of the media stream; (c) issuing a request to the given server to

initiate delivery of the media stream at a given offset; and (d) rendering the advanced

portions of the media stream.

Lumelsky teaches switching streaming media streams between a primary and a

secondary stream (Lumelsky, column 5, line 55 to column 6, line 7, and figure 2) where

a buffer is used to cache the advanced portions of the stream (Lumelsky, column 6,

lines 41-59) after a client request to initiate the second stream, and the advanced

portion is rendered until the offset is reached (Lumelsky, column 7, lines 27-56).

It would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to have combined Lumelsky and Goldszmidt-Wynblatt to provide

the stream switching of Lumelsky in the system of Goldszmidt-Wynblatt, because doing

so would enhance the playback to provide a smooth and uninterrupted stream at the client end (Lumelsky, column 6, lines 41-59).

10.   As per claim 16, Goldszmidt-Wynblatt-Lumelsky teaches the system further wherein the code is executable by the processor to initiate an instruction to the first server to cease transmission of the media stream before rendering the advanced portions of the media stream (Goldszmidt, column 9, lines 7-23, specifically figure 3a).

11.   As per claim 18, Goldszmidt-Wynblatt-Lumelsky teaches the system further wherein the code is executable by the processor to match data packets received from the first server and the given server such that the media stream rendered in the media player appears continuous (Goldszmidt, column 9, line 61 to column 10, line 5, and column 10, lines 44-48).

12.   As per claim 20, Goldszmidt-Wynblatt-Lumelsky teaches the system further wherein the media stream is not acceptable if it is being thinned by the first server (Goldszmidt, column 9, lines 7-23).

13.   As per claim 21, Goldszmidt-Wynblatt-Lumelsky teaches the system further wherein the media stream is not acceptable if a given indication from the first server is received (Goldszmidt, column 7, lines 10-45).

14.   As per claim 22, Goldszmidt-Wynblatt-Lumelsky teaches the system further
wherein the given indication is that the first server will be unavailable (Goldszmidt,
column 7, lines 10-45).

15.   As per claim 23, Goldszmidt-Wynblatt-Lumelsky teaches the system further
wherein the code executable by the processor determines that the given server has a
response time that differs from a response time of at least one other server in the set of
servers (Goldszmidt, column 10, lines 6-19).

16.   As per claim 24, Goldszmidt-Wynblatt-Lumelsky teaches the system further
wherein the code executable by the processor determines whether the media stream is
acceptable periodically as the media stream is being delivered (Goldszmidt, column 9,
lines 7-23).

17.   As per claim 25, Goldszmidt-Wynblatt-Lumelsky teaches the system further
wherein the code executable by the processor records given data associated with
receipt of the media stream (Goldszmidt, column 5, lines 33-49).

18.   As per claim 27, Goldszmidt-Wynblatt-Lumelsky teaches the system further
wherein the request is an RTSP OPTIONS command (Wynblatt, col. 2, lines 54-67).

19.   Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Goldszmidt et al. (U.S. Patent 6,195,680), Wynblatt et al. (U.S. Patent 6,546,421), and

Lumelsky et al. (U.S. Patent 6,377,996), further in view of Ravi et al. (U.S. Patent

6,292,834).

20.   As per claim 26, Goldszmidt-Wynblatt-Lumelsky teaches the above, yet fails to

teach wherein the advanced portions of the media stream are created by instructing the

first server to increase a delivery rate of the media stream or by instructing the media

player to decrease a rendering rate of the media stream.

Ravi teaches modifying media stream delivery rates in order to keep an

advanced portion buffer at an optimal capacity (Ravi, col. 6, lines 32-62).

It would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to have combined Goldszmidt-Wynblatt-Lumelsky and Ravi to

provide the 2 of Goldszmidt-Wynblatt-Lumelsky in the system of Ravi, because doing so

would improve the reliability and efficient transmission of streams from servers to clients

while efficiently using network resources (Ravi, col. 2, lines 64-67).

21.   Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Goldszmidt et al. (U.S. Patent 6,195,680), Wynblatt et al. (U.S. Patent 6,546,421), and

Lumelsky et al. (U.S. Patent 6,377,996), further in view of Gulbrandsen et al. ("RFC

2782").

22.   As per claim 27, Goldszmidt-Wynblatt-Lumelsky teaches the above, yet fails to

teach wherein the request is associated with a DNS SRV protocol..

Gulbrandsen teaches the use of the DNS SRV protocol (Gulbrandsen, overview

and rationale sections).

It would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to have combined Goldszmidt-Wynblatt-Lumelsky and

Gulbrandsen to provide the DNS SRV command of Gulbrandsen in the system of

Goldszmidt-Wynblatt-Lumelsky, because doing so would enable the use of several

servers for a single domain and to easily designate backup servers (see Gulbrandsen,

overview and rationale).

Conclusion

23.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-

3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm,

with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number

for the organization where this application or proceeding is assigned is (571) 273-8300.

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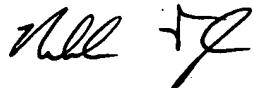
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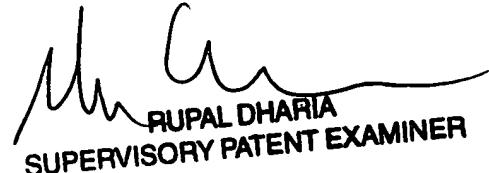
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